UNOCAL CORP.

IBLA 98-271 Decided June 21, 1999

Appeal from a decision of the Acting Associate Director for Policy and Management Improvement, Minerals Management Service, and the Acting Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, affirming a Minerals Management Service order to recalculate and pay additional royalties. MMS-92-0642-O&G.

Affirmed in part; reversed in part.

1. Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Royalties: Payments--Rules of Practice: Evidence

   In the absence of a regulation and a Payor Information Form explicitly stating that filing the form constitutes the assumption of the lessee's obligation to pay royalty by the person filing it, a document evidencing the person's agreement to accept this responsibility is necessary.

2. Administrative Procedure: Administrative Record--Administrative Procedure: Administrative Review--Appeals: Generally--Rules of Practice: Appeals: Generally

   An administrative decision may be reversed when it is not supported by a case record.

APPEARANCES: Stevia M. Walther, Esq., and Jonathan A. Hunter, Esq., New Orleans, Louisiana, for Unocal Corporation; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Sarah Inderbitzen, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Unocal Corporation (Unocal/Appellant) has appealed an October 9, 1997, Decision (Decision) of the Acting Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), and the Acting Deputy

Commissioner for Indian Affairs, Bureau of Indian Affairs (BIA), regarding royalties due on production from Lease No. 082-079366-0 (Lease), located on lands in the State of New Mexico and unitized with other Federal, Indian, and State leases in the Rincon Unit Area (Unit). The Decision upheld a September 30, 1992, MMS Order declaring that Appellant was "the established payor for Unit Agreements Nos. 892-000916-A, 892-000916-B, and 892-000916-C," and directing Unocal to recalculate and pay additional royalties due on the Lease for all months from October 1, 1983, through September 30, 1989, and to calculate and pay royalites on all other Federal and Indian leases participating in the above unit agreements during that time period.

By Order of March 22, 1999, we granted Unocal's motion to review the administrative record and sent the record to MMS' New Orleans office, where it was made available for Appellant's review. The record was returned to the Board on April 5, 1999, and to date, Appellant has not filed any request to supplement the record.

In its statement of reasons for appeal (SOR), Unocal asserts that since November 1, 1985, it has owned a partial interest in the Lease, and that the remaining working interests in the Lease are owned by unrelated third parties. Appellant argues transfer of operating rights documents conveyed only the obligation to pay royalties on the partial interests in the Lease which was assigned to Unocal, and asserts that it has no obligation to pay royalties on those portions of the three unit agreements on the Lease not covered by the assignment documents. Relying on Phillips Petroleum, 121 IBLA 278, 284-85 (1991), Unocal argues that absent an express assumption of the obligation to pay royalties for the interests of co-owners, a co-lessee cannot be held liable for payment. Additionally, Appellant cites Mesa Operating Limited Partnership, 125 IBLA 28 (1992) to assert that a "royalty payor can be held liable for the royalty obligations of another only if there exists a contractual basis for assuming the obligation." (SOR at 4.) Appellant further argues that a close reading of the contractual terms of the Unit Agreement and the Unit Operating Agreement reveals that "each lessee remains accountable for its own royalties." (SOR at 6.) Thus, according to Unocal, it is not responsible for recalculating and paying royalties owned by all parties participating in the three unit agreements.

In its Answer, MMS agrees with Unocal's assertion that, under the transfer of operating rights documents, Unocal assumed only the obligation to pay royalties on the portions of the Lease identified in the two transfer documents. However, MMS argues, this factor is irrelevant because under the Unit Operating Agreement, Unocal is responsible for all royalties due on production from the Rincon Unit.

[1] It is well-settled that the lessee is responsible for royalty payments due on production from its leases, unless the unit operator has formally assumed the obligation to tender such payments. See Stream Energy, Inc., 146 IBLA 130, 133 (1998), and cases cited.

In Mesa Operating Limited Partnership (On Reconsideration), 128 IBLA 174 (1994), we questioned whether, absent a regulation or a written agreement between the parties, MMS had the authority to hold an entity which is not a lessee accountable for paying the lessee's royalties. We concluded that

> [i]n the absence of a regulation and a PIF [Payor Information Form] explicitly stating that filing a PIF constitutes the assumption of the lessee's obligation to pay royalty by a person filing it, a document evidencing the person's agreement to accept this responsibility is necessary. Phillips Petroleum Co., 121 IBLA 278, 284-85 (1991); Forest Oil Co., 113 IBLA 30, 39, 97 I.D. 11, 17 (1990), rev'd in part on other grounds, 9 OHA 68, 98 I.D. 248 (1991).

Id. at 182-83.

[2] In MMS' Order of September 30, 1992, Appellant was directed to recalculate and pay additional royalties on production taken from Federal and Indian leases participating in Unit agreement Nos. 892-000916-A, 892-000916-B, and 892-000916-C and attributable to the Lease. The Order states that MMS had reviewed purchaser statements, gas balancing statements, lease royalty rates and paid reported royalties and, consequently, had concluded that

> sale of gas allocated from the three units to Lease No. 082-079366-0 were greater than the amount reported by Unocal for the months February 1987, August 1987, June 1988 and December 1988. During these four months Unocal was the established payor according to the Minerals Management Payor Information form records. Further, a review of the Royalty Details History Report SRH-250BR for those four months indicates that Unocal was the only payor on the lease.

(Order at 2.)

The record before us does not include the above-referenced PIF, or Unit Agreement Nos. 892-000916-A, 892-000916-B, and 892-000916-C. The record does include the following facsimile transmission, dated September 18, 1997, and addressed to Eric Hager from Gene Bordosky, MMS Unocal Residency: "Attached is the lease agreement. We didn't have a PIF, but I did attach a list of payors and operators which I printed out from our Lease History data base today."

A print-out in the record before us identifies Unocal as one of six royalty payors on production from the Lease, but we find no PIF or specific written designation making Unocal legally responsible for recalculating and paying royalties due from other lessees, nor does the record identify the specific lessees for whom Unocal would undertake royalty payments. In addition, the relationship of the three unit agreements to the Rincon Unit,

an area of 20,642.70 acres, is not made clear; Exhibit A to the Unit Agreement purported to be a map of the Rincon Unit, but that exhibit is missing. In short, the record, taken as a whole, fails to make the connections necessary to show that Unocal had agreed to pay royalties on behalf of other lessees in the unit agreements. When the case file does not support the decision appealed, the Board may properly reverse the decision. See Dugan Production Corp. (On Reconsideration), 117 IBLA 153, 154 (1990). We conclude that such is the case here.

To the extent Appellant contests the Decision appealed as to payment of additional royalties on that portion of the Lease acquired on November 1, 1985, its arguments have been considered and rejected. Thus, that part of the Decision appealed is affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed in part, and reversed in part.

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John H. Kelly
Administrative Judge

I concur:

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R.W. Mullen
Administrative Judge